IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.410 OF 2005

M/s.Noshirwan & co. Pvt.Ltd. Petitioner

versus

The Premier Automobiles Ltd. Respondents

Mr.Swapnil Bangar i/by Vinod Mistry & Co. for petitioner.

Mr.R.C.Dhuru with Mr.Suryawanshi i/by R.C.Dhuru & Co. for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th July 2006

PC :

1. Heard Shri Bangar for petitioner and Shri Dhuru for respondent.

2. Shri Bangar submits that there is a Dealership Agreement of 21st September 1991. During the course of dealings of about eight years the petitioner sold the vehicles and spare parts of respondent and all such dealings are reflected in an account which is maintained in the ordinary and normal course of business.

Relying upon an extract thereof (Annexure-A) and an entry noticing that as on 30th September 1998 a sum of Rs.14,89,377.46 is due and payable, Shri Bangar submits that there is prolonged correspondence. The account is current, open and mutual. Once such is the position and when the company addresses letters with regard to the entries therein and submits that on 15th January 2001 and 10th July 2002 certain wrong credit entries were given, then the claim of the petitioner cannot be said to be barred by limitation.

3. I have perused the company petition and the annexures thereto. I have also perused the affidavit in reply which has been filed on behalf of respondent. Para 13, page 7 of the affidavit in reply has been relied upon even by Shri Bangar. However, the company while dealing with para 14 of the petition states thus:-

> "... ... ... The Respondent Company denies having received any letters from the Petitioner Company, referred to in Paragraph-14. The Respondent Company denies that Petitioner had time and again, called upon the Respondent Company to make payment with reference to a sum of Rs.14,89,377.26. The Respondent denies that it has ever acknowledged the debt or liability payable to the

> Petitioner. The Petitioner's claim is hopelessly time barred as he failed to claim the amount from the Respondent after reconciliation was signed on 12th August, 1999. it is further submitted that the claim made in this Petition by the Petitioner is based on the reconciliation signed on 12th August, 1999. Hence, it is barred by law of limitation. Legal notice dated 20th January, 2005, was received from the Advocate of the Petitioner Company, making false claim of Rs.14,89,377.26 on the Respondent Company. The Respondent Company, however, through its Advocate, had replied the said Notice within the statutory period denying its liability to pay any amount to the Petitioner Company claimed in the said notice. The Petitioner Company again issued a letter dated 10th March 2005, through its Advocate, which was replied by the Respondent Company, vide its letter dated 28th March, 2005. The Respondent Company submits that claim of the Petitioner Company is barred by law of limitation and therefore, no amount, whatsoever, is legally payable by the Respondent Company to the Petitioner Company."

4. Despite usual pursuvasive efforts and vehemence at his command Shri Bangar could not satisfy me that the claim of the petitioner is within limitation. Prima facie, when the mutual current account which is relied upon has an entry as of 30th September 1998 and the company petition is filed in March 2005, then the claim cannot be said to be within limitation. Even if the letters at pages 44A and 44B are relied upon, it is difficult to hold that the claim was not barred on the date of this letter. Therefore,

any reliance upon these letters to save the bar of limitation is also prima facie misplaced.

5. There is much substance in the contentions of the company that beyond writing letters nothing has been done and which letters have not been received. The claim is disputed by the respondent company and it is not for this Court to resolve the disputes under alleged open, mutual and current account. It is well settled that the company petition is not a mode of recovery.

6. In such circumstances, this petition cannot be entertained. Petition fails and isaccordingly dismissed. However, order passed and observations made on the company petition shall not prejudice the rights and contentions of petitioner in recovery proceedings.

(S.C.DHARMADHIKARI, J.)